

UNITED STATES COURT OF APPEALS September 2, 2011

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

BOARD OF COUNTY  
COMMISSIONERS OF FRANKLIN  
COUNTY, KANSAS,

Plaintiff - Appellee,

v.

TERRY LEE ROBERTS,

Defendant - Appellant.

No. 11-3197  
(D.C. No. 5:11-CV-04063-JAR-JPO)

**ORDER**

Before **KELLY, LUCERO** and **HOLMES**, Circuit Judges.

This court lacks jurisdiction over this appeal.

The plaintiff originally filed this action in state court, alleging that the defendant had failed to pay real property taxes that had been levied and assessed, and seeking judicial foreclosure of the tax liens. The defendant removed the proceedings to the District of Kansas, claiming that the case presented a federal question under 28 U.S.C. § 1331 (providing that “[t]he district courts shall have jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”).

The district court remanded to state court. The court concluded that there was no basis for federal subject matter jurisdiction, and, therefore, removal was inappropriate.

A remand order based on lack of subject matter jurisdiction is not appealable. *See* 28 § 1447(d) (with an exception not applicable here, provides that “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.”); *Powerex Corp. v. Reliant Energy Services*, 551 U.S. 224, 232 (2007) (“We hold that when a district court remands a properly removed case because it nonetheless lacks subject-matter jurisdiction, the remand is ... shielded from review by § 1447(d).”); *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 640 (2006) (“[W]e have relentlessly repeated that ‘any remand order issued on the grounds specified in § 1447(c) [is immunized from all forms of appellate review], whether or not that order might be deemed erroneous by an appellate court.’”) (quoting *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 351 (1976)); *Flores v. Long*, 110 F.3d 730, 732, 733 (10th Cir. 1997) (holding that, even if the district court “employed erroneous principles in concluding that it was without jurisdiction,” there is no appellate jurisdiction to review a remand order entered in a removed case which is “based to a fair degree upon the court’s finding that it lacked subject matter jurisdiction to hear the case”) (internal quotes omitted).

Accordingly, this appeal is **DISMISSED**.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk



Ellen Rich Reiter  
Deputy Clerk/Jurisdictional Attorney